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C O N F I D E N T I A L LA PAZ 002960

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DEA FOR OEL/TOTH, BLANCO  
STATE/USAID PASS TO PAUL BONICELLI

E.O. 12958: DECL: 11/07/2017

TAGS: [PGOV](#) [PREL](#) [ECON](#) [BL](#)

SUBJECT: EVO'S VAGUE CONDITIONS FOR "CONDITIONLESS" AID

REF: LA PAZ 2956

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 (b) and (d)

¶1. (C) Summary: Bolivian President Evo Morales issued a decree October 11 presenting foreign assistance donors with a variety of new requirements to register projects with the Bolivian government and strengthen its oversight. The most potentially troublesome articles require that aid not/not imply "political or ideological conditions" or run counter to Bolivian sovereignty. The jury is still out on this extremely vague decree. It prompts more questions about its scope and categorization of donor assistance than it answers. The Embassy and the greater donor community are seeking clarifications with Bolivian Government counterparts. Development Minister Gabriel Loza promised forthcoming regulations and procedures and assured the donor community October 23 the decree would be implemented reasonably, focusing on registration of foreign funds and implementing partners. But, already the Justice Ministry has cited the decree to reject display of the USAID logo at a USAID project event. The donor community met October 30 and established a sub-committee to approach the government with decree questions, but was divided between decree skeptics and supporters. The decree appears to be unconstitutional and steps on congressional authorities. Congress is considering related legislation, but it is unclear if it will attempt to challenge the decree or embrace it. Government officials have based the decree's international legitimacy on the 2005 Paris Declaration, which both Bolivia and the U.S. signed. It is questionable, however, whether that broad agreement supports many of the decrees' specific articles. End Summary.

¶2. (U) Following two months of intermittent government criticisms of USAID programs, particularly democracy programs accused of undermining the government, Bolivian President Evo Morales decreed that all international development assistance conform to new requirements, including registration with the Bolivian Government. Supporting processes and regulations remain to be worked out. Donors are uncertain what level of concern is warranted about the decree given its vague wording. Decree 29308, Norms for the Management and

Implementation of External Donor Funds, was published in the national gazette October 11.

#### The Devil is in the Interpretation

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13. (C) The decree's stated intent is for the Bolivian Government to ensure that donor funds are harmonized with the National, State, and/or Municipal development plans and priorities, respect Bolivian legislation, and are implemented with Bolivian public sector institutions. Taken at face value this is not particularly onerous or out of step with our existing programs. However, the devil is in the details and in the many potential interpretations of vague language. The decree lacks clear definitions, does not identify whom or what entity is subject to its various provisions, does not state who will interpret the decree or provide guidelines on doing so, and seeks to impose provisions unilaterally and sometimes retroactively.

14. (U) The decree states that all government agencies that receive donor funds must register these funds with the Bolivian Government, making them subject to other articles of the decree and potentially to as yet unspecified government review. Sub-contracting by government entities with third parties to administer donor-supported programs is prohibited, although it is unclear if this will impact donor implementers. Requirements also include inscription of funds into Bolivian Government budgets, establishments of reporting requirements on information protected by U.S. law, the potentially ambiguous ability of Bolivian Government to "object" to donors' local hiring decisions, and the precedence of Bolivian contracting rules over those of the donor country.

#### No "Political or Ideological" Aid Allowed

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15. (C) Article 9 of the decree requires assistance to be without "political or ideological" conditions. Article 17 further prohibits aid that "undermines Bolivian sovereignty."

The decree does not further define either condition, nor does it assign a procedure or body to interpret or enforce them, opening them to arbitrary and politicized applications.

These articles may be linked to recent and unfounded government criticism that USAID democracy programs were supporting the opposition. Presidential Minister Juan Quintana, the most outspoken government critic of USAID, has said donors who cannot extract ideological conditions (at least the wrong kind of ideology) from their aid programs will be shown the door.

16. (C) U.S. assistance is by nature "conditioned" (e.g. earmarked) by Congress for needs it defines, restrictions for use (including assuring sound management and appropriate institutional capacity), and requirements for support from the host government. An extreme interpretation of the requirement could find all assistance in violation of the decree. Bolivian officials often cite Venezuelan aid as a model, as it comes "without conditions," and often in the form of a check from President Morales for local governments.

Critics argue the Venezuelan aid is very much conditioned on "political" factors, focused on bolstering pro-government politicians, and that not attaching any conditions to aid is the same as not having a plan, and ultimately unsustainable.

#### Domestic Legal Concerns

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17. (C) The decree gives the impression that the Bolivian Government may ignore the long standing Bolivian legal practice granting international agreements supremacy over presidential decrees. The decree empowers the Ministry of Planning and Development and Ministry of Foreign Relations to renegotiate bilateral agreements, such as the 1951 Point Four Agreement with the U.S. and subsidiary agreements signed as

recently as this year. The decree also prompts concerns about executive overreach and the role of the Bolivian Congress in international relations. Article 228 of the Bolivian Constitution determines the Constitution has supremacy over legislation and decrees, and that only the Bolivian Congress (Article 59-12) can change and modify a Law of the Republic. The Bolivian Congress is attempting to exercise legislative oversight of the executive on this decree, as demonstrated by an October 24 hearing requiring Development Minister Gabriel Loza to present the decree to the Internal Affairs Commission of the Lower House. A congressional staffer told EmbOffs the commission is considering drafting a statute on donor regulation.

#### Vague Squared: Broad Declaration Used to Back Vague Decree

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¶8. (C) During an October 23 open meeting with donors, Development Minister Gabriel Loza cited the 2005 Paris Declaration as legal authority for the decree. The declaration signed by many leading aid NGOs and 91 countries, including the U.S. and Bolivia, attempted to hone development strategies between aid donor and recipient nations. It resulted in broad recognition that donor countries should respect host government sovereignty, operate transparently, and align assistance programs with national development plans and systems "to the greatest extent possible." Although a thorough study of the Declaration is needed to ascertain its relevance to the decree, Post's initial assessment is we are already operating within the broad parameters of the Declaration.

#### Minister Loza: Don't Worry, Donate Happy

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¶9. (C) Development Minister Gabriel Loza attempted to assure donors October 23 the decree was aimed at improving transparency by ensuring aid projects were registered with the government, not to punish or obstruct development partners. He added the decree would improve government understanding and coordination of development efforts underway in Bolivia. He said some sub-ministers had approved projects and agreements without informing their own ministers, let alone other agencies. Loza explained donors could continue to use contractors (although this is far from clear from the decree's text) so long as both the contractor and funds were registered with the government. He claimed about half of Bolivia's 1,200 aid contractors were unregistered. Loza appeared more interested in projecting to the press and donors how reasonable the decree was than offering answers to donors' questions. He proposed that details about the decree's scope, interpretation, and other issues would be worked out in the future with donor input.

#### USAID Branding Burns MOJ

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¶10. (C) Embassy contacts and staff generally regard Loza as reasonable and suspect he will attempt to keep to a "reasonable" implementation of the decree. But, it is unclear how influential Loza can or will be executing a decree that contacts speculate is backed and intellectually authored by such hardliners as Presidential Minister Juan Quintana and Government Minister Alfredo Octavio Rada. Also, even if high-ranking government officials agree to a less restrictive interpretation of the decree focusing on implementer and fund registration and increased project reporting, there are currently no regulations or procedures in place to ensure their subordinates do the same. The Ministry of Justice has already used the decree to object to the use of the USAID logo and slogan "from the American people" at an upcoming event as a "political" condition. Using the logo at public events is a USAID requirement and is backed by agreements with the Bolivian Government allowing USAID "branding." USAID is still discussing the issue with the MOJ. If local officials apply this degree of sensitivity in interpreting Article 9, donors are in for challenging years ahead.

## Potential to Counter Counter-Narcotics Aid

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¶11. (C) Embassy La Paz's Narcotics Affairs Section (NAS) is concerned that the Bolivian Government will use the decree to insert itself in both the funding and execution of counter-narcotics programs that begin after December 31, ¶2007. Under the decree, the GOB could assign itself to determine what interdiction or eradication efforts will continue, and the USG may then have to begin the process of renegotiating a new Letter of Agreement. Particularly troubling to NAS, Article 20 allows the GOB to object to the hiring of Bolivian or foreign staff of cooperative agencies that provide support to donor programs.

### Much Ado About Nothing?

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¶12. (C) Vice Minister of Social Defense, Felipe Caceres, told NAS staffer October 22 that Minister Loza held a meeting with ministers and vice ministers to discuss in greater detail the background and rationale behind the decree. Loza used the example of USAID, citing a case in which 90 percent of assistance funding went to salaries and overhead and only 10 percent went to field implementation to benefit needy Bolivians. NAS staffer corrected Caceres, stating the approximate and average figures for USAID projects are about 30 percent for contractor and grantee administration costs and 70 percent for field implementation. NAS staffer added it was disconcerting that the Minister of Planning and Development continued to get basic facts wrong regarding U.S. development assistance. NAS staffer indicated that the decree requirement to cut off aid with "conditions" could change how NAS programs are carried out because USG NAS funds are entirely conditioned on counter-narcotics programs. Although Caceres had not read the decree, he said he would study it and consult with higher officials in the Bolivian Government to seek further clarification to determine if certain clauses might be removed or modified.

### Other Vulnerable Programs Flying Under Radar, For Now

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¶13. (C) The government appears to be aiming the decree at USAID and NAS (often complementary) programs, reflecting Bolivian Government criticism over the past few months. For the moment, other agencies have not been singled out or approached by their GOB counterparts for inclusion in the decree's requirements. Doubts remain about how interested or capable the Bolivian Government would be in tracking the many assistance programs not associated with USAID or NAS. However, the vague decree hangs threateningly over all sections providing assistance should it be interpreted broadly:

--MILGRP: These programs are already generally directed through and in cooperation with Bolivian Government institutions (largely the military and Ministry of Defense), so provisions about third-party contractors and registration of funds do not apply. However, the clauses about rejecting "political or ideological" aid or assistance that runs counter to Bolivian sovereignty could be interpreted to mean just about anything. Provisions about the right to object to local hires of partnering cooperation agencies are also potentially troubling.

--DEA: DEA funds assigned to the Bolivian counter-narcotics police (FELCN) also are not impacted by third-party constraints of the decree. But the FELCN, as part of the Bolivian National Police, would fall under the decree's provisions and is vulnerable to the same potentially arbitrary objections to local cooperation agency staff and controls over assistance.

--PAS: The decree could impact Public Affairs Section donations to private institutions (i.e. Symphony Orchestra, Binational Centers, etc.) and the public grant to the Ambassador's Fund for Cultural Preservation. Both public and private assistance needs to be registered by government

ministries under complicated and vaguely defined decree requirements. Because of its relatively small budget and non-controversial nature of its assistance, PAS funds are the most likely to be overlooked for decree compliance.

#### Waiting for the Phone to Ring

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¶14. (C) All 2008 project agreements are required to be consistent with the decree. The Ministry of Planning and Development, in coordination with the Ministry of Foreign Affairs, has 180 days from the end of decree's transition period of December 31, 2007, to renegotiate assistance agreements to reflect the new requirements. The government has provided no clear guidance on how or when the renegotiation would move forward or given formal notice of an intent to renegotiate our assistance agreements with the GOB.

Minister Loza's October 23 comments indicated working with donors in Bolivia on new agreements, perhaps not understanding this would require State Department permission and a formal request in DC. The government's apparent eagerness to renegotiate agreements on this scale suggests a misunderstanding of the time, resources, and potential downside involved. Donor countries and NGOs can be expected to press for their own outstanding concerns once agreements are reopened, such as government requirements and taxing of foreign assistance.

#### Mixed Reaction from Donors

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¶15. (SBU) Donors agreed the decree needed clarification during an October 30 meeting of the GRUS (Grupo de Seguimiento) donor coordination group and assigned a sub-group to identify and submit questions to the Bolivian Government. Although USAID has volunteered to join the sub-group, post will continue to work bilaterally with the Bolivian Government on issues specific to our programs and our method of development assistance delivery. The GRUS appears unlikely to speak as a strong or unified voice on possible decree encroachment on donor independence. Although many members of GRUS donor coordination group, which meets monthly in La Paz, were diplomatically critical or guarded concerning the decree (Germany, OAS, EU, and USAID), other donors appeared unconcerned or even positive (France and Belgium). Although donors regretted the Bolivian Government had not consulted with them prior to the decree's release, they generally seemed inclined to accept the main principles of the decree, the decree's asserted consistency with the Paris Declaration, and hoped to help the GOB develop the implementing regulations.

#### Decree Down With MCC

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¶16. (SBU) Millennium Challenge Corporation (MCC) General Coordinator Graciela Toro downplayed the decree's impact to Bolivian's \$657 million MCC proposal. She said stipulations barring "political" aid (Article 9) were too vague to apply to Bolivia's MCC proposal, at least until they are more clearly defined. She also was not worried about prohibitions on third party contracts (Article 7) because the decree only mandates that appropriate government agencies do the work they are capable of doing. According to her interpretation, if the administering agency does not have the capacity (as would be the case with large-scale road building projects contemplated by the MCC proposal) then the work can be contracted out. The Bolivian Government's MCC Legal Advisor, Carlos Hugo Pinilla, provided a similarly unrestrictive interpretation of the decree to EmbOffs November 5 (reftel). Although he was disappointed he was not consulted on the decree's drafting, Pinilla added he did not see an MCC conflict with Article 9's objection to "political or ideological" aid and believed Article 7 would allow for MCC outsourcing. He plans to participate in the Ministry of Planning's "Coordination Tables" with donors to help shape implementing regulations.



17. (C) The jury is still out on this decree. It is so vague it will be all things to all people. Post is not clear on the scope of the decree and the modalities of donor assistance it applies to. Minister Loza seemed to suggest that the great majority of the decree is focused on those donors who pass cash to government ministries through a formal government-to-government agreement. The use of that donor cash by the Bolivian ministry appears to be tightly regulated by the decree. Neither USAID nor NAS however, work under this modality, hence we are asking ourselves whether the decree will have much of an affect on U.S. government funding, or, alternatively whether the Bolivian Government will insist that the USG begin providing aid in this fashion. Although implementing regulations should provide greatly clarity about the decree's intent and impact, they may be similarly vague, and how strictly these regulations are applied may also be an open question.

18. (C) Comment continued: Although some officials may apply the decree in good faith and with good intentions, the decree, without further definition from implementing regulations, could go beyond the intent or letter of the Paris Declaration, which may be used as cover for some potentially onerous and excessive government oversights. Publicly we remain optimistic, give the Bolivian Government the benefit of the doubt on interpretation, and avoid provoking the drafting of onerous implementing regulations. The Ambassador said October 29, "Let us hope that it (the decree) does nothing to damage our aid, I don't think this is the government's intention." However, while we hope for the best, we plan for the worst. We continue to work with our Bolivian counterparts to clarify new requirements and maintain our development impact. As the Embassy sections share information and work on a common approach forward, we are considering several proactive next steps, including a letter of interpretation to the GOB explaining our understanding of the decree. This may provoke a reactionary response from a government that clearly wants to emphasize it is in the driver's seat, but the alternative is waiting for the government to fill in the blanks. That could be a very long wait, considering the decrees vagaries may be intentional and designed to allow for double standards: EU aid OK, U.S. aid "political." Post will consult with the Department before proceeding.

19. (C) Comment continued. It is one thing to publish decrees and hold a press conference, quite another to organize and execute these new, vaguely defined responsibilities to monitor and evaluate development projects. The government assures guidance and regulations are coming to fill in vast expanses of unanswered questions. We have heard this before with new visa requirements for American Citizens. The government does not seem to have the manpower, technical resources, or a coherent plan to achieve either initiative within the time allotted. An NGO that works with PAS recently finished the process to register with the Bolivian Government; it took almost a year. Unlike the visa case, however, the decree will impact a wide variety of donor countries, NGOs, aid contractors, and the government itself. In both cases, we see confusion and postponements in the short term, as capacity clashes with intent. End Comment.

Selected Articles of Decree 29308

20. (U) ARTICLE 2.- (SCOPE OF APPLICATION)

I. All public entities included in Articles 3 and 4 of Law No.1178 of July 20, 1990, on Governmental Management and Control are included in the scope of application of this Supreme Decree and are obligated to comply with its provisions.

II. The activities of the multilateral financial

organizations, cooperation agencies, governments, and national or international non-governmental organizations (NGOs) that provide grants to the private sector of the Republic of Bolivia are included in the scope of application of this Supreme Decree.

#### ARTICLE 4.- (MODES OF DONATION)

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The donations can be made by means of the following modes:

a) Official donation. Is provided by multilateral financial organizations, cooperation agencies, governments or countries, national or international non-governmental organizations by means of an Agreement or Convenio signed with the Bolivian State;

b) Direct donation. Is provided in direct manner to the Bolivian State or to one of its public entities, without a signed Agreement or Convenio signed with the Bolivian State; and

c) Non-official or unilateral donation. Is the contribution not acknowledged as cooperation to the Republic of Bolivia, which is directly transferred by the donor to private entities or organizations.

#### ARTICLE 7.- (SERVICE OUTSOURCING)

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I. The public entities that manage donation resources for the implementation of programs and projects are banned from hiring third parties for their administration; in case they do not have their own institutional capability they will be able to sign inter-institutional agreements with national public entities for that purpose.

II. The management of donated relief resources received by the country for emergencies and/or disasters is exempted from this requirement. In such cases, the National Council for Risk Reduction and Disaster Management (CONARADE) will be able to authorize the modality to be used for the management of these resources.

#### ARTICLE 9.- (PROHIBITION OF CONDITIONS.)

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No cash or in-kind donations that imply political or ideological conditions will be accepted.

#### ARTICLE 17.- (ADMINISTRATION OF MONETIZED DONATIONS.)

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I. In agreements that establish in-kind donations, to be monetized or not, the Bolivian authorities will not accept conditions that undermine the national sovereignty.

II. The financial resources derived from the monetization of in-kind donations will be exclusively managed by the implementing or beneficiary public entities or by the ones established by legal norms, without interference from the donors.

#### ARTICLE 20.- (INCOMPATIBILITIES)

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I. The Ministers and Vice Ministers are prohibited from serving in cooperation agencies, multilateral organizations, foreign governments, and non-governmental organizations for up to two (2) years after ceasing their public service, whether as direct employees or consultants.

II. Also, the public officers in entities in charge of managing and implementing programs and projects financed with foreign donations are prohibited from serving in those cooperation agencies, multilateral organizations, foreign governments, and non-governmental organizations with which they had relationship during the administration and/or

implementation of the aforementioned projects for up to two (2) years after ceasing their public service, whether as direct employees or consultants.

III. The Ministry of Development Planning shall include a clause expressing this incompatibility in all Financing Agreements to be signed.

IV. The authorities that are appointed by a Supreme Resolution as representatives to multilateral organizations shall be exempted from this provision.

V. The National government will be able to object to the hiring of Bolivian or foreign officers by the cooperation agencies or multilateral organizations to serve in executive or management positions in the resident offices of the international cooperation within the Bolivian territory.

VI. The former public servants who, while exercising their public functions, participated in the management or implementation of donation resources cannot participate directly or indirectly in the processes of procurement of goods, services, or personnel in those programs and projects for up to two years upon the cessation of their functions.

GOLDBERG